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No. 97-147

In the
Supreme Court of the United States
October Term, 1997

ATLANTIC MUTUAL INSURANCE CO.
and Includible Subsidiaries,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

BRIEF AMICUS CURIAE OF AMBASE CORPORATION IN SUPPORT OF PETITIONER

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AmBase Corporation[1], with the consent of all parties, submits this brief amicus curiae pursuant to Rule 37.3 of the Rules of this Court in support of petitioner Atlantic Mutual Insurance Company.

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[1]Rule 37.6 disclosure: This brief amicus curiae was authored by Peter H. Winslow and Gregory K. Oyler, counsel for AmBase Corporation. There was no monetary contribution to the preparation or submission of the brief other than legal fees and expenses paid by AmBase Corporation.

INTEREST OF THE AMICUS CURIAE

Amicus AmBase Corporation is a financial holding company that in 1987 joined in filing a consolidated federal income tax return with five wholly-owned subsidiaries that were property and casualty ("P/C") insurance companies ("The Home Group"). Like petitioner, amicus' 1987 consolidated tax return was audited by respondent, and a deficiency was proposed based on respondent's assertions that The Home Group engaged in reserve strengthening in 1986. Respondent determined that in 1986 The Home Group had increases in reserves for pre-1986 accident years attributable to reserve strengthening even though The Home Group's actual reserves decreased in 1986 by over $1 billion. Amicus filed a petition in the United States Tax Court on June 7, 1996, raising legal issues that are similar to those involved here. The case presently is pending in the Tax Court. Appeal would lie in the United States Court of Appeals for the Second Circuit.

The purpose of this amicus brief is not to repeat the arguments made by petitioner. Rather, amicus brings to the Court's attention material facts that bear on the meaning of reserve strengthening in the P/C industry that are reflected in the expert reports in this case, but were misinterpreted by the Third Circuit.

SUMMARY OF ARGUMENT

The term "reserve strengthening" has a plain meaning in the tax law. Reserve strengthening occurs when an actuary makes a change in basis of computing reserves (*i.e.*, the actuary changes reserve assumptions and/or methodologies) to increase the adequacy of reserves. Section 1023 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2399 (1986)

("1986 Act"), must be read in a manner consistent with this plain meaning of reserve strengthening, and Treas. Reg. § 1.846-3(c) (the "Regulation") must be held to be invalid to the extent that it conflicts with this statutory meaning.

The Third Circuit erred in several respects in upholding the validity of the mechanical test for reserve strengthening in the Regulation.[2] The court's fundamental error is its conclusion that the term "reserve strengthening" in section 1023 of the 1986 Act is ambiguous. The term is not ambiguous because it has had a settled meaning in the tax law for many years, as evidenced by cases and IRS rulings and regulations. Congress used this same meaning of the term just two years prior to the 1986 Act in the fresh start transition rules of section 216 of the Tax Reform Act of 1984, Pub. L. No. 98-369, 98 Stat. 494, 758 (1984) ("1984 Act"), applicable to both life and P/C insurers. From the context and purpose of the statute, it is clear that, in enacting the 1986 Act, Congress intended to adopt the tax definition of reserve strengthening. The fact that this tax definition of reserve strengthening is applicable to P/C insurers, as well as life insurers, is clear from The Home Group's own reserve practices — in 1985 it engaged in reserve strengthening as that term is used in the tax law. The Third Circuit was wrong to reject the settled tax definition of reserve strengthening.

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[2]In this brief, amicus will not describe the loss discounting rule of section 846 of the Internal Revenue Code of 1986 ("Code"), the "fresh start" transition rule of section 1023 of the 1986 Act, or the "mechanical test" of the Regulation. Amicus assumes that the briefs of the parties will provide the background and analysis on these matters.

The Third Circuit was led astray by its improper and erroneous factual finding that reserve strengthening has more than one meaning ***in the P/C industry***. Because of the well-established meaning of the term in the tax law, that meaning controls, and any other meaning in the P/C industry is irrelevant. There is no reason to assume that Congress intended to adopt some definition of reserve strengthening peculiar to the P/C industry when the fresh start rule of section 1023 applies equally to life and P/C insurers. In addition, it was error by the Third Circuit even to make a factual finding concerning any meaning in the P/C industry. Weighing testimony and making factual determinations is the province of the trial court; if the trial court omits a critical factual finding, the case must be remanded so that the trial court can make the factual finding or supplement the record. Further, the Third Circuit erred yet again by making a wrong finding concerning the meaning of reserve strengthening in the P/C industry. Its conclusion in this regard was based on a misreading of the expert reports. In fact, all four experts in the case agreed on the basic principle that reserve strengthening in the P/C industry is used to refer to an act to improve reserve adequacy of current reserves, resulting from a change in reserve assumptions and/or methodologies. This definition is consistent with the accepted tax law definition.

Finally, respondent's definition of reserve strengthening is unreasonable, and the Regulation is invalid, because it treats all 1986 loss payments as increases in 1986 reserves.

ARGUMENT

I. THE THIRD CIRCUIT ERRED IN REJECTING THE LONG-STANDING TAX DEFINITION OF RESERVE STRENGTHENING

Amicus agrees with petitioner and the Tax Court that the term "reserve strengthening" has a settled meaning in the tax law. Accordingly, section 1023 is unambiguous. Reserve strengthening refers to a change in basis of computing reserves, *i.e.*, a change in reserve assumptions and/or methodologies. *E.g.*, Treas. Reg. §§ 1.806-4(b) Ex. (1), 1.809-5(a)(5)(iii), 1.810-3. This conclusion — that reserve strengthening has a well-recognized meaning in the tax law — should be the end of the inquiry.

Because of the accepted meaning of reserve strengthening in the tax law, the finding of the Third Circuit that the term has more than one meaning ***in the P/C industry*** is irrelevant to the proper interpretation of section 1023. Both respondent and the Third Circuit have missed the point that the reserve discounting rules, to which the "fresh start" transition rules of section 1023 relate, also are applicable to life insurance companies. See the last sentence of section 807(c) of the Code. For example, the reserve discounting rules, and the "fresh start" provisions, apply to reserves for cancellable accident and health insurance — an insurance coverage typically offered by life insurance companies. Presumably, it is because the reserve discounting rules apply equally to life and P/C insurers that the rules were placed in Part III of Subchapter L of the Code, applicable to both life and P/C insurers, rather than in Part II, applicable only to P/C insurers. In short, because the "fresh start" transition rule applies to both life and P/C insurers, there is no reason to assume, as the Third Circuit did, that Congress intended to

adopt some meaning of reserve strengthening peculiar to P/C insurers.[3] It is more logical to conclude that Congress intended to adopt the tax definition of reserve strengthening that previously had applied consistently to both life and P/C insurers and had been used by Congress just two years earlier in a comparable transition rule for life insurance reserves.[4]

Applicability of the tax definition of reserve strengthening to P/C insurers is demonstrated by The Home Group's reserve strengthening in 1985

A key basis of the Third Circuit's ruling is its erroneous conclusion that the "life insurance" definition of reserve strengthening is irrelevant to P/C insurers.[5] (App. at A-12 to A-13.)[6] This flawed notion is based on a series of incorrect

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[3]For the reasons stated later in this brief, amicus believes that reserve strengthening has the same meaning for P/C and life insurers.

[4]As in the case of section 1023, the reserve changes made by the 1984 Act, and the fresh start transition rules in section 216 of the 1984 Act, applied to both life and P/C insurers. *See* section 832(b)(4) of the Code.

[5]The Third Circuit incorrectly assumed that the tax definition of reserve strengthening was derived from a definition of reserve strengthening applicable only to life insurance companies.

[6]In this brief, page citations for the Third Circuit's opinion refer to the Appendix to the Petition for Writ of Certiorari ("App. at A-__").

premises. While noting that actuarial assumptions and methodologies are integral to the computation of life insurance reserves, the Third Circuit wrongly infers that actuarial assumptions and methodologies are not an important part of determining P/C reserves. This inference leads the Third Circuit to the incorrect belief, unsupported by anything in the record, that there would never be any reserve strengthening by a P/C insurer under the tax definition of the term. Based on this belief, the Third Circuit finds that it is illogical to apply the tax definition of reserve strengthening to P/C insurers.

In fact, as amicus would prove in its case pending in the Tax Court, actuarial assumptions and methodologies are integral to the computation of P/C reserves, and from time to time P/C actuaries make changes in these assumptions and methodologies. These facts are consistent with the testimony of the experts and the finding of the Tax Court in *Western National Insurance Co. v. Commissioner*, 102 T.C. 338 (1994), *aff'd*, 65 F.3d 90 (8th Cir. 1995), that reserve strengthening for life insurance companies has characteristics similar to reserve strengthening for P/C companies. In both contexts, reserve strengthening involves a change in reserve assumptions and/or methodologies.

Further, the actions of The Home Group provide a real-life example of reserve strengthening by a P/C insurer (as defined by the Tax Court and used in the life industry). The former chief actuary of The Home Group made a change in her reserve methodology in March 1985 that improved the adequacy of current reserves. This action was described by the companies in their public reports and in internal documents as reserve strengthening, and is fully consistent with the definition of reserve strengthening used in the life insurance industry and adopted by the Tax Court in *Western National*. The amount of

The Home Group's 1985 strengthening bears no relationship to the amount that would have been determined as reserve strengthening under the mechanical test in the Regulation. In short, amicus' own facts refute an important premise of the Third Circuit — that reserve strengthening for life companies is not analogous to reserve strengthening for P/C companies.

II. THE THIRD CIRCUIT MADE AN IMPERMISSIBLE FINDING OF FACT AS TO THE MEANING OF RESERVE STRENGTHENING IN THE P/C INDUSTRY

Because reserve strengthening has a clear meaning in the tax law, the definition of the term ***in the P/C industry*** should be irrelevant. Nevertheless, the Third Circuit made a *de novo* review of the expert reports on the P/C meaning of the term and concluded erroneously that: "The expert testimony here makes clear that the term 'reserve strengthening' as used in section 1023(e)(3)(B) is subject to more than one interpretation." (App. at A-9.) Based on this finding of ambiguity, the Third Circuit resorted to legislative history to find support for the mechanical test adopted in the Regulation.

The Third Circuit erred in making any factual finding at all concerning the meaning of reserve strengthening because the Tax Court in this case made no findings of fact as to the meaning of reserve strengthening in the P/C industry. In addition, the Tax Court made no findings as to the relative credibility of the various experts, who were not subject to cross-examination. In these respects, the record before this Court is deficient. This deficiency should not cause this Court to conclude that the term "reserve strengthening" is ambiguous. Amicus believes it could demonstrate at trial of its own case that reserve strengthening has a clear meaning. That meaning

is the tax definition — the same definition adopted by the Tax Court in *Western National*.

If the record at the trial court omits a material finding of fact, it is improper for an appellate court to make its own finding, particularly where that fact is contested. Moore's Federal Practice 3d § 206.03[6] (1997). An appellate court is not permitted to weigh conflicting testimony and make a factual determination. *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 809, 713-14 (1986); *Anderson v. Bessemer City*, 470 U.S. 564, 573-75 (1985). Rather, if the factual issue is critical to its holding, the case must be remanded to the trial court to make the factual finding, supplement the record, or to clarify its prior findings. *See Kelley v. Everglades Drainage Dist.*, 319 U.S. 415 (1943). In this case, the Third Circuit made its own finding of fact as to the meaning of reserve strengthening in the P/C industry. This was improper.[7]

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[7]Although the cases cited deal with review of district court decisions, section 7482(a)(1) of the Code provides that appellate review of a decision of the Tax Court shall be the same as that of a decision of the district courts in civil actions tried without a jury.

III. THE THIRD CIRCUIT ERRED IN CONCLUDING THAT RESERVE STRENGTHENING DOES NOT HAVE A CLEAR MEANING IN THE P/C INDUSTRY

An analysis of the expert reports confirms that reserve strengthening in the P/C industry means an action taken by an actuary to improve the adequacy of current reserves, resulting from a change in reserve assumptions and/or methodologies

Unlike in the *Western National* case, the Tax Court in this case did not make a specific factual finding as to the meaning of reserve strengthening in the P/C industry. Nevertheless, the Third Circuit on its own evaluated the expert reports and concluded that they reflect several meanings of reserve strengthening in the P/C industry.[8] Amicus has engaged one of the two experts used by petitioner in this case. This expert, Irene K. Bass, has informed amicus, and amicus expects to be able to prove in a trial of its case, that the Third Circuit has misinterpreted the expert reports.

The reports of the experts reveal that a P/C actuary refers to reserves as "strong" or "weak" in a manner that is synonymous with "adequate" or "inadequate." (Report of petitioner's expert W. James MacGinnitie ("MacGinnitie Report") at 6; Report of respondent's expert Ruth E. Salzmann ("Salzmann Report") at

[8]The Third Circuit summarized its understanding of the expert reports on the meaning of reserve strengthening in footnote 5 of its opinion. (App. at A-9 to A-10.)

4.)[9] In the context of setting reserves, the term "reserve strengthening" connotes an ***action*** taken to improve the adequacy of the ***current*** reserves — the larger reserve is more adequate, or stronger. (MacGinnitie Report at 7; Salzmann Report at 6.) Therefore, a P/C actuary engages in the act of reserve strengthening (making them more adequate) when the actuary increases the reserves from what they otherwise would have been at that same point in time. Irene Bass, in her report, goes on to say that an essential characteristic of this action is a change in reserve assumptions or methodologies. (Report of petitioner's expert Irene K. Bass ("Bass Report") at 31-32.) In summary, reserve strengthening in the P/C industry means an action taken by an actuary to improve the adequacy of current reserves resulting from a change in reserve assumptions and/or methodologies.

The Third Circuit's misreading of the expert reports results from its failure to distinguish between the act of strengthening ***current*** reserves and an evaluation of the adequacy of ***prior*** reserves. This misreading may be caused by the fact that the expert reports sometimes describe prior reserves as "stronger" or "weaker" than reserves at other points in time. (*E.g.*, MacGinnitie Report at 7.) However, three of the experts agreed that any such comparison of reserves at different points does not properly measure reserve strengthening unless all subsequent developments are taken into account and total reserves are considered. (MacGinnitie Report at 7; Salzmann Report at Appendix II; Rebuttal Report of Ruth E. Salzmann re Bass Report ("Salzmann Rebuttal re Bass") at 2; Bass Report at 32-33.) Because the mechanical test of the Regulation does not

[9]In this brief, page citations for the expert reports and rebuttal reports refer to the original page numbers of those reports.

do this, the three experts (including one of respondent's experts) agreed that the mechanical test does not even attempt to measure the "strength" of reserves. (MacGinnitie Report at 9-11; Rebuttal Report of Ruth E. Salzmann re MacGinnitie Report ("Salzmann Rebuttal re MacGinnitie") at 1-4, Appendix I; Bass Report at 33-46.) Equally important, respondent's mechanical test fails to make the critical distinction between, on the one hand, the action-based concept of reserve strengthening, which involves an ***intentional act*** by an actuary to increase the adequacy of ***current*** reserves and, on the other hand, an ***after-the-fact comparison*** of whether reserves turned out to be "stronger" or "weaker" than ***earlier*** reserves. As respondent's own expert recognized, a layman sometimes incorrectly concludes, after making a hindsight comparison of earlier reserves, that reserve strengthening has occurred (Salzmann Report at 6; Salzmann Rebuttal re Bass at 3) when, in fact, the actuary may have taken no reserve strengthening action to achieve the observed result. Thus, three of the four experts opined that the mechanical test of the Regulation does not accurately measure reserve strengthening.

The Third Circuit misread the expert reports

The basis for the Third Circuit's conclusion that reserve strengthening has different meanings in the P/C industry is reflected in footnote 5 of its opinion. (App. at A-9 to A-10.) The Third Circuit describes the report of petitioner's expert, W. James MacGinnitie, in a manner that demonstrates that the court did not understand his opinion. Footnote 5 states: "According to Mr. MacGinnitie, in order to determine whether reserve strengthening has occurred one must compare the adequacy of the current reserve for a line of business to the adequacy of a previous reserve for that same line of business."

This was ***not*** Mr. MacGinnitie's testimony. Mr. MacGinnitie emphasized at the beginning of his report that he agreed with the definition of reserve strengthening as set forth in the report of petitioner's other expert, Irene Bass.[10] (MacGinnitie Report at 4.) He opined that the determination of changes in reserve adequacy (*i.e.*, reserve strengthening or weakening) must be made in relation to another value for the same reserve at the same point in time. (MacGinnitie Report at 7.) He went on to analyze reserves retrospectively at different points in time to determine whether they were relatively stronger or weaker. However, Mr. MacGinnitie did not express the opinion that such a retrospective review of reserves at different points in time represents reserve strengthening. Instead, his retrospective reserve analysis was intended to explain why the mechanical test of the Regulation does not even purport to measure the "strength" of reserves.

In footnote 5, the Third Circuit failed to acknowledge that the expert reports of respondent's expert, Ruth Salzmann, are in

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[10]It is true, as the Third Circuit states, that Ms. Bass' report stated that the term "reserve strengthening" is not well-defined in P/C actuarial, accounting, or insurance regulatory ***literature***. However, the fact that reserve strengthening is not written about extensively does not mean that it has no accepted meaning. Ms. Bass also stated that reserve strengthening has specific characteristics upon which there is near universal agreement among P/C actuaries. (Bass Report at 14-19.) Ms. Bass concluded that the term "reserve strengthening" has established characteristics and a commonly understood meaning in the P/C industry. (Bass Report at 30-33.) Ms. Bass went further to explain why the mechanical test of the Regulation is inconsistent with any accepted meaning of reserve strengthening. (Bass Report at 37-46.)

general agreement with petitioner's experts on the meaning of reserve strengthening. Ms. Salzmann points out, as did the other experts, that reserve strengthening is an increase in the relative adequacy of reserves. (Salzmann Report at 5.) She further acknowledged that: "If one does not have to put a value on it, the term generally means an increased confidence in the adequacy of current reserve levels." (Salzmann Report at 6.) In other words, Ms. Salzmann agreed with the basic thrust of petitioner's expert reports. This is made clear in her rebuttal reports. She specifically agreed with both Mr. MacGinnitie's and Ms. Bass' opinions on the meaning of reserve strengthening (*i.e.*, that it involves a change in assumptions and/or methodologies). (Salzmann Rebuttal re MacGinnitie at 1.) She only disagreed with Ms. Bass that a required characteristic of reserve strengthening is that the change in reserve assumptions and/or methodologies must be material.[11] (Salzmann Rebuttal re Bass at 1.)

Equally important, Ms. Salzmann agreed in both of her rebuttal reports that the mechanical test in the Regulation does not properly measure reserve strengthening. In fact, the quotation from her book included as Appendix II to her report, in essence, states that to use the term "reserve strengthening" to refer to the unfavorable development of reserves, as the Regulation does, is a "misnomer." (Salzmann Report at Appendix II.) She specifically states that the meaning of reserve strengthening in the Regulation "is not correct" (Salzmann Report at 7), and results in an "imperfect

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[11]Although Ms. Salzmann did not disagree as to the meaning of reserve strengthening, she did take exception to the Bass and MacGinnitie reports in minor respects.

measurement" of reserve strengthening. (Salzmann Rebuttal re Bass at 3.)[12]

Respondent's other expert, Raymond S. Nichols, agreed that petitioner's experts properly defined reserve strengthening (Report of Raymond S. Nichols ("Nichols Report") at 2; Rebuttal Report of Raymond S. Nichols ("Nichols Rebuttal") at 10, 17) but opined that they did not describe the only meaning of reserve strengthening. He went on to equate reserve strengthening with the unfavorable development of reserves as his preferred definition — exactly the definition that respondent's other expert, Ruth Salzmann, said is incorrect. (Salzmann Report at 7.) The flaw in Mr. Nichols' report is revealed in his attempt to distinguish "reserve strengthening" from an increase in "reserve adequacy." (Nichols Report at 28-29.) Each of the other experts starts from the agreed premise that the "strength" of reserves refers to their adequacy. Mr. Nichols starts from a different premise — that reserve strengthening refers to "the impact of changes in reserves from one accounting date to another." (Nichols Report at 28.) It is important to bear in mind that Mr. Nichols' report is directly in conflict with the report of Ms. Salzmann, respondent's other expert.[13]

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[12]The facts in petitioner's case indicate that petitioner's 1986 reserves were less adequate than its total 1985 reserves. From Ms. Salzmann's rebuttal reports, it is clear that she would have concluded that petitioner had not engaged in reserve strengthening; petitioner's total 1986 reserves were ***weaker*** than its total 1985 reserves.

[13]Mr. Nichols interprets Ms. Salzmann's report as stating the same test for reserve strengthening as the report of Mr. MacGinnitie, and disagrees with it. (Nichols Report at 3 n.3.)

In summary, three of the expert witnesses in this case essentially agreed on the meaning of reserve strengthening, *i.e.*, an intentional act to improve the relative adequacy of reserves. These three experts also agreed with Ms. Bass' characteristics of reserve strengthening, *i.e.*, it results from an actuary's change in reserve assumptions and/or methodologies. Although the fourth expert agreed that this is a permissible definition of reserve strengthening (Nichols Report at 2), he preferred a second definition that the other three experts state is an incorrect use of the term.

Amicus submits that the meaning of reserve strengthening in the P/C industry is clear — that it properly refers to an action taken by an actuary to increase the relative adequacy of current reserves. An essential characteristic of reserve strengthening is a change in reserve assumptions and/or methodologies; without such a change, reserve strengthening cannot occur. The fact that one of respondent's experts offered another definition that he prefers does not mean that the term is ambiguous. It simply means, as Ruth Salzmann stated, that his preferred definition is "not correct" (Salzmann Report at 7) and a "misnomer." (Salzmann Report at Appendix II.)

IV. THE REGULATION IS UNREASONABLE BECAUSE IT TREATS ALL LOSS PAYMENTS AS INCREASES IN RESERVES

In determining the amount of a company's reserve strengthening, the approach of the Regulation is to compare the company's reserves at the end of 1985 for accident years 1985 and prior with the company's reserves at the end of 1986 for those same accident years, then add loss payments during 1986. The Third Circuit and respondent have argued that this approach of the Regulation is justified by the description of

reserve strengthening in the Conference Report on the 1986 Act, 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-367 (1986) ("Conference Report"), as including "all additions to reserves." It is important to understand, however, that for most taxpayers, including petitioner and The Home Group, year-end 1986 reserves for pre-1986 accident years were actually less than year-end 1985 reserves.[14] In other words, comparing the two years-end, there actually were ***no additions to reserves*** in 1986.

In such cases, the approach of the Regulation finds reserve strengthening only by treating all loss payments during the year as additions to reserves. While the Conference Report provides that claims paid may be taken into account, nothing in the Conference Report suggests that the proper way to take them

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[14]For example, respondent determined under the mechanical test of the Regulation that in 1986 The Home Group engaged in reserve strengthening in the amount of over $180 million, with respect to accident years prior to 1986. However, the loss reserves of The Home Group for accident years prior to 1986 were $729 million ***less*** on December 31, 1986, than the loss reserves for those same accident years were on December 31, 1985.

into account is to treat them all as additions to reserves.[15] Certainly, what is treated as reserve strengthening under the Regulation results in many instances simply from the fact that the insurer is required to pay a loss in an amount which exceeded the insurer's prior estimate of that loss, rather than from any attempt to add to reserves to improve the adequacy of year-end 1986 reserves. In short, it is not 1986 reserve additions that result in a denial of fresh start under the Regulation, but 1986 loss payments. A regulation which treats loss payments as reserve strengthening, in the face of an actual reduction in reserves, cannot be said to "implement the congressional mandate in some reasonable manner." *Cf. National Muffler Dealers Ass'n, Inc. v. United States*, 440 U.S. 472, 476-77 (1979) (quoting *United States v. Cartwright*, 411 U.S. 546, 550 (1973) (in turn quoting *United States v. Correll*, 389 U.S. 299, 307 (1967)). The Regulation is invalid.

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[15]Properly read, the Conference Report means that all ***reserve strengthening*** additions to reserves are denied fresh start whether or not the reserve strengthening additions to reserves were reasonable or mandated by actuarial necessity. This interpretation is supported by the immediately preceding sentence in the Conference Report which refers ***only*** to "reserve strengthening additions" that are excluded from fresh start. Further evidence that the Conference Report refers only to reserve strengthening additions to reserves can be found in the remaining part of the sentence, which describes the "additions" as those "attributable to an increase in an estimate of a reserve." These words connote an action that is taken by the taxpayer — a reserve strengthening action of adding to an estimate of a current reserve.

CONCLUSION

For the foregoing reasons, this Court should reverse the Third Circuit's ruling.

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